

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Local Telephone Competition and)	WC Docket No. 04-141
Broadband Reporting)	
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	

**COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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The National Cable & Telecommunications Association (“NCTA”), by its attorneys, submits the following comments in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. Its members provide video programming, broadband Internet, telecommunications and other services throughout the United States. NCTA also represents cable programmers and suppliers of equipment to the cable television industry.

INTRODUCTION AND SUMMARY

The cable industry supports the Commission’s proposal to extend the broadband reporting process for five more years. By continuing the Form 477 reporting process, the Commission will regularly derive data on the key trends in broadband deployment and penetration. The data will be invaluable, enabling the Commission to fulfill its responsibility under Section 706 to conduct periodic inquiries to “determine whether advanced

telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”¹

The Commission proposes to maintain the confidentiality of company-specific information, but asks whether this information should be made publicly available after some waiting period. The Notice also asks whether company-specific broadband data should be shared with state commissions under appropriate conditions. The cable industry supports the existing confidentiality procedures, including the sharing of company-specific confidential information with state commissions pursuant to appropriate conditions. However, company-specific Form 477 information will remain competitively sensitive indefinitely, and should not be released to the public.

Form 477 should be revised to take account of marketplace changes since its adoption. Among these changes are “the emergence of competing platforms to deliver high-speed services, increasing data speeds of services offered, and a steady improvement in mass-market acceptance of services.”² Revisions to Form 477 will enable the Commission to keep current with marketplace developments.

In revising Form 477, it is vital that the Commission strike the right balance between data collections that are needed to properly assess whether the state of broadband deployment is reasonable and timely, and reporting obligations that do not directly serve this purpose. Excessively intrusive reporting obligations may require broadband providers to specially develop reporting systems at considerable cost, without significant benefits. Prior to imposing new reporting obligations, the Commission should first determine whether a particular obligation

¹ See § 706 (b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

² Local Competition and Broadband Reporting, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 04-81, rel. Apr. 16, 2004, at ¶ 5 (“Notice”).

is directly or only tangentially related to the purposes of Section 706. If the Commission concludes that a particular obligation is only tangentially related, it should carefully consider whether the purposes of the reporting requirement are achievable in a less burdensome manner, and if the reporting requirement is, in fact, necessary.

The Commission should acknowledge that it has derived valuable information from the current Form 477 filing approach. These submissions have enabled the Commission to track the development of broadband deployment and penetration. The existing Form 477 should be seen as an essential tool that provides a solid foundation for the renewal of the Form 477 reporting process.

The Commission should continue to require broadband providers to separately report the number of advanced services and “high speed” connections. While cable companies are finding the one-way “high-speed” category of decreasing significance as consumers opt for increased two-way capability, the “high-speed” service remains the dominant means by which telephone companies deliver advanced telecommunications capability. Form 477 should also continue to separately track each service category.

The Commission asks whether the existing threshold for broadband reporting should be lowered from 250 connections for each company in a state to a reduced threshold, or whether it should be eliminated entirely. The cable industry supports the reduction of this threshold from 250 connections in a state to 100. Companies providing broadband service with fewer than 100 connections should not be required to report actual numbers, but instead should indicate that they are offering service within the state.

The Commission should not adopt certain other proposals. Broadband providers should not be required to report optimum speed either by company or by zip code, or speeds actually realized.

The Commission should adopt its proposal to require a “best estimate” of the number of residential customers within a state to whom advanced telecommunications capability is deployed. For cable companies, this requirement should be limited to the deployment of this capability within the company’s video service area. However, the Commission should not require companies to estimate the number of potential connections in areas to which service is not deployed. As an alternative to requiring the reporting of the number of connections in each zip code, the Commission should consider requiring the reporting within a zip code of an estimated percentage of video homes passed to which broadband service is deployed.

I. THE CONFIDENTIALITY OF COMPETITIVELY-SENSITIVE DATA SHOULD BE MAINTAINED

The Commission should continue to maintain the confidentiality of information submitted on Form 477 because it is competitively sensitive. The Form 477 data is used by the Commission to compile semi-annual reports on industry trends. The Commission has successfully produced these valuable reports for several years. It should continue to collect Form 477 data, and produce the reports, while maintaining the confidentiality of information submitted by individual filers.

The Commission should also continue to share state-specific Form 477 data with state commissions pursuant to established confidentiality procedures. As the agency notes, sharing of such information with state commissions facilitates “regulatory review of developing local service competition and broadband deployment trends.”³ The Commission further observes that to date it has entered into ten information sharing arrangements with state commissions that have agreed to confidentiality conditions. This process appears to effectively balance the benefits of

³ Notice, ¶ 13.

information sharing with the states against the risks of revealing competitively sensitive data that was produced with the understanding that it would remain confidential.

The Commission should not adopt its proposal to make company-specific Form 477 information publicly available after a limited period of confidentiality. This information is provided to the Commission for regulatory purposes with the understanding that it will not be publicly divulged. It is not provided for any other purpose.

The Commission recognizes the continuing legitimacy of “claims of confidentiality ... in connection with competitively sensitive information.”⁴ But it asks whether “the proliferating deployment of broadband services nationwide, and the dynamism of communications markets generally,”⁵ warrants a generic finding that competitively sensitive information when filed no longer “remains competitively sensitive after the passage of time, such as a year or two.”⁶

The proliferating deployment of broadband services and the dynamism of communications markets generally are likely to make company-specific Form 477 data *more* -- not less--competitively sensitive for a lengthier period than if the marketplace were not experiencing dynamic competition. The public release of data that demonstrate patterns of exceptionally high demand in certain zip codes and lower levels of demand in other areas over multiple reporting periods, may cause new entrants to market their services to the areas evidencing the highest levels of demand. The prospective use of competitively sensitive information by private interests for commercial advantage justifies the Commission’s determination, consistent with the Freedom of Information Act and the Commission’s rules, “to

⁴ *Id.*, ¶ 12.

⁵ *Id.*

⁶ *Id.*

continue releasing only aggregated information about broadband deployment in ... published reports to protect against release of company-specific information directly or indirectly.”⁷

While there are likely to be time frames after which certain Form 477 data provided by specific companies in individual filings is no longer competitively sensitive, these time frames will vary by company, geographic area, commercial circumstances and the particular data under consideration. It is not possible to establish generic time periods for each piece of data for each geographic location of each individual filer. Moreover, “this change in publication procedures *would* undermine companies’ willingness to answer ... broadband data requests fully and promptly, with a minimum of procedural challenges.”⁸

II. THE EXISTING FORM 477 PROCESS IS EFFECTIVE

The Notice rightly focuses on potential improvements to Form 477. It is important to first recognize, however, that the existing program has been highly effective in generating data that provide a comprehensive picture of the state of broadband deployment and consumer adoption of broadband services. The data is an invaluable source of broadband information. The Form 477 data has provided crucial support for the Commission’s conclusions in its Section 706 reports that the pace of broadband deployment is “reasonable and timely.” The continuation of these dramatic trends is evidenced by the Commission’s most recent summary statistics based on the Form 477 filings.⁹

The tables and charts accompanying the most recent report offer a comprehensive picture of broadband deployment and penetration. Table 4 of the report shows that residential and small business advanced services lines – defined by the Commission as lines with a capacity

⁷ *Id.*, n. 26.

⁸ *Id.*, ¶12 (emphasis supplied).

⁹ “High-Speed Services for Internet Access: Status as of December 31, 2003,” Industry Analysis and Technology Division,” Wireline Competition Bureau, June 2004.

of more than 200 kbps in both directions – have increased by more than seventeen fold, from 1,043,694 to 18,095,131, in four years.¹⁰ In percentage terms, as shown in Chart 8, the coaxial cable share of advanced services lines has stayed relatively constant, at 83.6% at the end of 1999, and 83.3% at the end of 2003.¹¹

Form 477 is also the source of useful data on the broadband adoption rate in individual states. According to the most recently released data, there have been substantial increases in the number of high speed lines (i.e., lines over which services are delivered at a rate of at least 200 kbps in one direction) in individual states in the last four years. These gains in broadband adoption have occurred in large and small states, and in all regions of the country.¹²

Form 477 is also the means by which the Commission obtains information on the number of zip codes, stratified by population density, in which high-speed service is offered and there is at least one high-speed customer. The information collected on Form 477 has enabled the Commission to gather information on the breadth of adoption of high-speed service. The information is particularly useful in assessing the trends in the availability of high-speed service to less populated areas where, as recently as three years ago, high-speed service was much less widely deployed than it is today.

Residential broadband service adoption and deployment trends have changed dramatically since the Commission first instituted its Form 477 reporting process. The data submitted on Form 477 gives the agency the ability to track the substantial growth in the availability of residential broadband service, and to conclude with confidence that the pace of

¹⁰ *Id.*, Table 4.

¹¹ *Id.*, Chart 8.

¹² *Id.*, Table 8.

broadband adoption and deployment is reasonable and timely. In addressing possible revision in Form 477, the Commission should utilize the existing form as an essential tool.

III. THE COMMISSION SHOULD EXPAND THE INFORMATION SUBMITTED ON FORM 477, WHILE SIMULTANEOUSLY REFRAINING FROM UNNECESSARILY BURDENSOME REPORTING REQUIREMENTS

Residential broadband deployment has changed dramatically since the Commission first instituted the Form 477 reporting process. The service was initially available to only a limited group of potential subscribers, but now residential broadband is widely available. Residential broadband penetration has also increased markedly. Nearly half of all residential Internet customers are broadband customers, and increasing numbers of narrowband customers are expected to switch to broadband in the next few years.¹³ It is appropriate in these circumstances for the Commission to extend the Form 477 reporting process for five years beyond the scheduled sunset, and modify reporting requirements so it can take account of existing and anticipated changes in residential broadband deployment.

The renewed reporting process should balance the legitimate needs of the Commission for current data to fulfill its regulatory responsibilities against the costs to broadband providers of providing that data. The Commission should further recognize that, in an era of “light regulation” of newly emergent Internet offerings, there should be equally streamlined reporting requirements. The Commission should not adopt reporting requirements that fail to meet this test.

A. Data on Penetration

The development of residential broadband into a widely available and vibrantly competitive service justifies certain of the Commission’s proposals to collect more detailed data on Form 477. But several of the proposed measures should not be pursued.

1. Reporting of Residential “High Speed” and “Advanced Services” Connections

The Commission proposes to continue to require broadband providers to separately report the number of residential “high-speed” and “advanced services” connections. The cable industry supports this proposal.

By maintaining separate data for high-speed and advanced broadband connections, the Commission will be able to track the gains in penetration of advanced services relative to high-speed services. The most recent Commission data show that the vast majority of cable broadband customers already receive 200 kbps in both directions, while a significant majority of telephone company broadband customers obtain 200 kbps service in only one direction. The number of subscribers to high-speed service is likely to diminish over time as subscribers gain increased appreciation of the comparative advantages of increased upstream capacity. It is still necessary, however, for the Commission to gather data on “high speed” customers to gauge the extent of consumer acceptance of high-speed services versus advanced services, and to evaluate the adoption rate of advanced services by increasingly greater numbers of residential broadband customers.

The data will also be of continuing value to providers of broadband capability, content companies and suppliers. On the basis of the data, broadband providers will continue to obtain a comprehensive picture of consumer adoption of broadband, and the relative shares of the providers. Content companies, and advertisers on many of their sites, will be able to use the data to assess the scope of the potential market for services that require increasing amounts of bandwidth. Suppliers of broadband equipment and software will be able to use the data to assist in their assessment of the potential demand for their products. Each of these participants in the

¹³ Cable/Satellite Industry Overview, “What Does the Market Expect?,” Morgan Stanley, Apr. 8, 2004, at 41.

residential broadband marketplace will be able to use the data to gauge the pace of consumer adoption of broadband nationally, and to calibrate investment decisions based on the data in combination with data from outside sources.

2. Reporting of Residential Advanced Services Connections By State

The Commission asks whether the current state-by-state threshold for reporting of high-speed lines, currently 250 lines that connect end-users to the Internet in a state, should be reduced or eliminated. NCTA supports lowering the threshold from 250 lines in a state to 100, which will capture all broadband companies that serve significant numbers of residential customers in a state. Lowering the threshold further, or eliminating it entirely, may result in an unwarranted burden on the smallest providers of residential broadband services.

In lieu of reporting its actual number of high-speed lines, a small operator should be required to send a letter to the Wireline Services Bureau semi-annually at the time that Form 477 is due. The letter should state that the broadband company is offering high-speed service within a state, and that the number of residential broadband lines actually served is less than one hundred. If the number of high-speed lines actually served in a state subsequently reaches one hundred or greater, the broadband provider would become subject to the Form 477 reporting procedure. This approach will effectively balance the agency's need for broadband penetration data and the costs to the smallest providers of collecting the information, placing the information in the requisite format, and submitting it to the Commission.

3. Reporting of Residential Advanced Services Connections By Zip Code

The Notice states the purpose of Form 477 reporting is “to support our study of broadband deployment pursuant to section 706 of the 1996 Act.”¹⁴ Section 706 directs the Commission to conduct periodic inquiries to “determine whether advanced telecommunications capability is being *deployed* to all Americans in a reasonable and timely fashion.”¹⁵ The Commission’s semi-annual reports demonstrate that the pace of broadband deployment has been “reasonable and timely.”

The Commission proposes filers of Form 477 specify the number of high-speed connections by zip code. The cable industry appreciates the Commission’s desire to develop a more detailed understanding of broadband deployment within particular states, and recognizes that the current system (which provides certain information on a zip code basis) has its limitations.

As explained more fully in Section I, however, cable companies are very concerned that if this information were to become publicly available, it could cause competitive harm to broadband providers. This is particularly the case with respect to the reporting by a provider of the number of connections within a zip code. Such information might be used by new or existing competitors to selectively serve only the areas of the highest demand. Such a development would be inconsistent with the Commission’s policy objectives and could be very harmful to the reporting provider, such as a cable company, that has taken the economic risks associated with the widespread deployment of broadband services throughout the areas in which it offers cable service. One alternative, described in the “Data on Deployment” section below,

¹⁴ Notice, ¶ 6.

¹⁵ *Supra* n. 2 (emphasis supplied).

would be for broadband providers to report in a zip code a percentage estimate of video homes passed to which advanced telecommunications capability is offered.

4. Reporting of Residential Advanced Services Connections by End-User Authorized Maximum Usage Speeds

The Commission should not adopt its proposal that broadband providers categorize and report end-user connections based on authorized maximum speed. Residential broadband has changed significantly over the past several years as increased speeds have become widely available, consumers have demonstrated willingness to purchase and utilize this capability, and content providers have developed services that take advantage of this capability. But it is neither appropriate nor necessary that the Commission's broadband reporting process include such granular data.

Under the proposal, broadband providers would be required to break down and report the number of end-user connections according to the maximum usage speed. Service providers would report the number of connections falling within each of six maximum speed categories. These six categories encompass services of at least 200 kbps in both directions. But the latter five categories involve increasingly greater service speeds in one direction, which for practical purposes is the downstream direction. In addition to the existing category of service speeds greater than 200 kbps in both directions, the Commission proposes to add speed categories in the faster direction of greater than 200 kbps, and less than 2.5 mbps; greater than or equal to 2.5 mbps, and less than 10 mbps; greater than or equal to 10 mbps and less than 25 mbps; greater than or equal to 25 mbps and less than 100 mbps; and greater than or equal to 100 mbps.

Requiring reporting of broadband connections at this level of detail is not necessary to support the “study of broadband deployment pursuant to section 706.”¹⁶ That goal can be

¹⁶ Notice, ¶ 6.

achieved if a broadband provider reports the authorized maximum speed provided to broadband customers within a state. For example, millions of cable broadband subscribers are now offered maximum downstream rates of 3 mbps. By obtaining reports of broadband providers' maximum usage speed, the Commission will be able to effectively monitor over time increases in advanced broadband capability.

5. Reporting of Maximum Speeds Classified By Zip Code

Broadband providers should not be required to report the number of residential connections in each zip code by maximum speed. Many cable companies do not currently maintain information in this exceptionally granular form. Development of this information will require new reporting systems that may result in considerable expense and the diversion of resources better used for other purposes.

It is the standard practice of cable companies to provide broadband service at the same maximum speed throughout their service areas, except in those cases in which companies have elected to offer multiple speed "tiers" which are available at customer option. But even in those areas where multiple speed tiers are offered and customers elect to purchase slower speeds, the maximum available speed will remain unchanged. This general industry practice makes the reporting of the number of connections in each zip code associated with particular maximum speeds unnecessary.

6. Reporting of Actual Speeds Observed

The Notice asks whether filers should report the actual speeds observed and realized by end users. Toward this end, the Notice inquires if "there are any administratively workable

industry standards or practices for measuring typical or actual speeds delivered to end users (as opposed to peak or optimum speeds)?”¹⁷

The Commission should not adopt this proposal. At the present time, cable companies do not have the necessary standards or practices to comply with this reporting requirement. To comply, a cable company would have to track, record and place in the proper form results associated with the actual speed of every transmitted data packet. Even if a cable company could do this, the resulting expense could be considerable. And it is doubtful that the submitted data would have any clear significance from a network management perspective.

Currently, there is no industry standard or practice to collect data to measure actual speeds at which data packets are transmitted. Cable companies are evaluating different combinations of upstream and downstream speed thresholds, and upstream and downstream defined network management byte thresholds, to achieve the optimum metrics for subscriber satisfaction and network management. Actual speeds vary at any moment in time. There is no consistent metric to evaluate system performance.

In time, the cable industry may be in a position to propose appropriate metrics. Imposition of a requirement to report actual speeds now, however, would be premature due to the absence of the necessary tools and practices. In addition to adding costs, imposing such a reporting requirement may disrupt and retard the industry’s ability to develop optimum subscriber performance metrics. If actual speed results are reported, private interests may use these results to pressure broadband providers to make investments and to implement designs that are less than optimal. The far better course would be to permit the marketplace to continue to work.

¹⁷ Notice, ¶ 7.

B. Data on Deployment

The Commission proposes to require broadband service providers to report their “best estimate” of the percentage of mass market end-user premises in a state to which service was available over the provider’s facilities as of the filing date. The Commission also proposes, in those instances in which broadband providers do not build-out to their entire franchise areas, that companies report a best estimate of the mass market end-user premises located in non-built out areas. It is specifically noted that “the number of mass-market end-user premises in a franchise area may be larger than the number of ‘video homes passed’ by a cable system operating in that franchise area.”¹⁸

The cable industry supports the filing of “best estimates” of the percentage of end-user mass-market premises served as a reasonable and effective means to gather data periodically on the state of broadband deployment. By relying upon “best estimates,” the Commission will be able to compile useful data on the availability of broadband service nationally, and to identify with sufficient precision those areas that are not yet served.

But for cable companies, the filing of the data should be limited to “video homes passed.” Obviously, cable companies do not provide broadband service to homes that they do not pass and to which they do not offer video service. Usually cable companies do not pass certain homes because such homes are not easily accessible or are located in isolated areas, and serving these homes will result in exceptionally high costs. Cable companies are generally unable to estimate the number of homes in their franchise areas to which video services are not offered.

The Commission may also wish to consider, as an alternative to the number of connections in a zip code, requiring broadband providers to report the percentage of video homes passed in a zip code in which subscribers are able to purchase the provider’s service (e.g., the

provider offers service to 100% of video homes passed in a zip code, to 50%, etc.). This information will give the Commission a good sense of the availability of broadband services on a zip code-by-zip code basis. Because even this information would be commercially sensitive, however, the Commission should protect its confidentiality should it decide to take this approach. And, it should provide broadband companies with the time required to develop the necessary computer systems to gather the requisite data if it does not already exist in the necessary form.

CONCLUSION

The Commission should extend the Form 477 broadband reporting process for an additional five years to track the state of deployment of advanced telecommunications capability to all Americans. Competitively sensitive information that is company-specific and submitted pursuant to conditions of confidentiality should not be released. In recognition of changed marketplace and technological conditions since Form 477 was first adopted, the Commission should make the several changes to Form 477 outlined herein. But it should not require the submission of unnecessarily detailed penetration data that are not necessary to fulfill statutory obligations.

¹⁸ Notice, Instructions at 7.

Respectfully submitted,

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